

May 6, 2008

The Honorable Phil P. Leventis
Member, South Carolina Senate
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Leventis:

We understand that you desire an opinion of this Office concerning membership on the Sumter Consolidation Transition Committee (the “Transition Committee”). According to the request letter, this committee was created as part of legislation consolidating Sumter School Districts 2 and 17. In the letter, you reference the composition of the Transition Committee, which includes members of the two school district’s boards, as well as thirteen members appointed by the Sumter County Legislative Delegation (the “Delegation”). You informed us that

“[o]ne of the members [of the Transition Committee] appointed by the Sumter County Legislative Delegation . . . is a member of the District 2 Board. This appointment results in a total of four members of the District 2 Board serving as members of the Transition Committee. The District 2 Board has seven members in total. Therefore, a gathering of the four members on the Transitional Committee would constitute a quorum of District 2 Board members.

Based upon this information, you ask the following three questions:

- (1) Given that four members of the District 2 Board are currently appointed to the Transition Committee, would a meeting of the Transition Committee constitute a meeting of the District 2 Board?
- (2) Does the Delegation’s appointment of members . . . to the Transition Committee who are also members of the Boards for District 2 or 17 present a problem considering the prohibitions against dual office holding contained in the South Carolina Constitution?

(3) Does serving as a member of the Transition Committee and a member of the District 2 Board, District 17 Board, Sumter City Council, or Sumter County Council . . . present a problem considering the prohibition against dual office holding contained in the South Carolina Constitution?

Law/Analysis

With regard to your first question, we assume you are inquiring as to whether a meeting of the Transition Committee would constitute a meeting of the District 2 Board under the South Carolina Freedom of Information Act ("FOIA"). Section 30-4-60 of the South Carolina Code (2007) states: "Every meeting of all public bodies shall be open to the public unless closed pursuant to § 30-4-70 of this chapter." Section 30-4-20(a) defines "public body" to include school districts. Thus, these provisions are applicable to the District 2 Board. Furthermore, section 30-4-20(d) of the South Carolina Code (2007) defines "meeting" as "the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power."

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." Chem-Nuclear Sys., LLC v. South Carolina Bd. of Health and Env'tl. Control, 374 S.C. 201, 648 S.E.2d 601(2007). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." Kiriakides v. United Artists Commc'n, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994). With regard to the provisions contained in FOIA, our Supreme Court held: "FOIA is remedial in nature and should be liberally construed to carry out the purpose mandated by the legislature. FOIA must be construed so as to make it possible for citizens to learn and report fully the activities of public officials." New York Times Co. v. Spartanburg County School Dist. No. 7, 374 S.C. 307, 311, 649 S.E.2d 28, 30 (2007). "Thus, when interpreting the word 'meeting' as used in the FOIA, the term must be broadly construed in light of the foregoing remedial purpose." Op. S.C. Atty. Gen. August 8, 1983.

You informed us that if all of the members of the District 2 Board that serve on the Transition Committee attend a Transition Committee meeting, then a quorum of District 2 Board members would be present. In an opinion of this Office issued in 2002, we considered whether attendance at a city council committee meeting by non-committee members of city council constituted a city council meeting. Op. S.C. Atty. Gen., August 19, 2002. In that opinion, we took the view of other jurisdictions finding that if a quorum of a public body is present, there is a rebuttable presumption that it is for the purpose of holding a meeting. Id.

Following our 2002 opinion, we presume that if a quorum of the District 2 Board is present, then a meeting is established under FOIA. However, we cannot overlook the language in the Legislature's definition of the term "meeting." According to the definition in section 30-4-20(d), the meeting must be to "to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power." Although the Transition Committee may discuss issues concerning District 2, nothing in the Transition Committee's enabling legislation indicates it has supervision, control, jurisdiction, or advisory power matters generally handled by the District 2 Board. Rather, according to the Transition Committee's enabling legislation, it was created "to coordinate the consolidation of Districts 2 and 17 into the Sumter School District." S. 639, 117th Gen. Assem., Reg. Sess. (S.C. 2008). Furthermore nothing in the enabling legislation indicates that the Transition Committee has authority over the individual school districts including District 2. Thus, we do not believe that attendance at a Transition Committee meeting by members of the District 2 Board falls within the definition of a meeting under FOIA. Of course, we caution that the four members of the District 2 Board could not utilize attendance at the Transition Committee meeting to conduct District 2 business. Nonetheless, we note that the Transition Committee is likely a public body under FOIA. Therefore, it is subject to FOIA including the provision requiring meetings be open to the public.

Next, you inquire as to whether individuals appointed to serve on the Transition Committee by the Sumter County Legislative Delegation, who are also members of the District 2 or 17 Boards are in violation of the dual office prohibition contained in the South Carolina Constitution. Article XVII, section 1A of the South Carolina Constitution (Supp. 2006) prohibits a person from holding "two offices of honor or profit at the same time, but any person holding another office may at the same time be an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public." To contravene this provision, a person concurrently must hold two offices having duties that involve the exercise of some portion of the sovereign power of the State. Sanders v. Belue, 78 S.C. 171, 174, S.E. 762, 763 (1907). Furthermore, our courts recognize other relevant considerations in determining whether an individual holds an office, such as, whether a statute, or other such authority, establishes the position, proscribes the position's duties or salary, or requires qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 477, 266 S.E.2d 61, 62 (1980).

Numerous opinions of this Office conclude that members of county school boards or county school boards of trustees hold an office for purposes of the dual office holding provision. Ops. S.C. Atty. Gen., December 12, 2007; June 16, 2006; June 21, 2001; July 31, 1992. Thus, we must only determine whether a position on the Transition Committee is an office.

According to your letter, the Legislature created the Transition Committee as part of Senate Bill No. 639 of 2008. S. 639 117th Gen. Assem., Reg. Sess. (S.C. 2008). The Transition Committee's enabling legislation states that it is to be composed of twenty-five members, of which

thirteen are appointed by the Sumter County Legislative Delegation, “with consideration given to the geographic, economic, and demographic segments of the community.” Id. In addition, the enabling legislation establishes certain powers and responsibilities afforded to the Transportation Committee as follows:

(C) the committee may organize, begin planning for the changeover to the district, enter into contracts to effectuate these purposes, and perform other related matters pertaining to it.

(D) By no later than May first of each year, the Sumter Consolidation Transition Committee shall prepare a budget to be submitted to the Sumter County Legislative Delegation. When approved by the delegation, the budget must be funded by the school districts, each paying half, from funds provided by the districts from their respective budgets. County council may increase the budgets to meet these requirements.

(E) The committee shall be insured and indemnified in the same manner as School Districts 2 and 17 are insured and indemnified.

(F) Members of the committee shall receive per diem allowed by law for members of state boards, committees, or commissions, but are not entitled to mileage and subsistence.

(G) The committee must be abolished when the members of the board are elected at the 2010 election, qualify for office, and take office.

(H) Beginning with the 2008-2009 school year, the committee may make recommendations to each present board concerning attendance zones for a school in the county without being constrained by existing district lines and each board shall consider the recommendations of the committee in determining attendance at schools in the county without being constrained by existing district lines, as defined by Act 155 of 2007. In the event a board creates a new attendance zone that encompasses portions of Districts 2 and 17, a person residing in the new attendance zone may attend a school within that attendance zone without regard to whether the school is located in the district in which the person resides. A school in District 2 or 17 may not bear a financial impact or impose a financial charge if a person attends a

school within a new attendance zone but not in the district in which he resides.

S. 639 117th Gen. Assem., Reg. Sess. (S.C. 2008).

In our review of the legislation establishing the Transition Committee, we did not find a provision providing for a term office for Transition Committee members. However, because the act states the Transition Committee will be abolished after the 2010 elections, we presume members appointed will serve until then. The legislation does not require the members to take an oath. Furthermore, whereas members receive a per diem, they do not appear to receive compensation for their service. In addition, while the Legislature calls for the Sumter Legislative Delegation to consider “geographic, economic, and demographic segments of the community” when making appointments, we do not find any specific qualifications for serving on the Transition Committee. Lastly, and most importantly, it does not appear that the Transition Committee may exercise sovereign power of the State.

The enabling legislation gives the Transition Committee the authority enter into contracts, but only as they relate to the planning and organizing of the consolidation. Furthermore, it allows the Transition Committee to perform tasks related to matters concerning the organization and planning for the consolidation. However, we presume these tasks are administrative in nature and do not involve an exercise of the sovereign power of the State. Although the Legislature gave the Transition Committee the authority with regard to attendance zoning in subsection (H), the Legislature clarified that this authority is limited to making recommendations. Thus, we do not find evidence that the legislation attempts to transfer sovereign powers traditionally associated with school districts to the Transition Committee. Accordingly, the powers given to the Transition Committee appear to be that of an advisory body, which is charged only with authority to coordination the consolidation of the two districts. Thus, based on these observations, we are of the opinion that membership on the Transition Committee is not an office for purposes of dual office holding. Therefore, if a member of the Transition Committee holds another office, we do not believe that member is precluded under article XVII, section 1A from holding a position on the Transition Committee.

Lastly, you inquire as to whether a member of the Transition Committee serving on the Transition Committee by virtue of holding another position would be in violation of the dual office holding provisions. The Transition Committee’s enabling legislation states that membership on the Transition Committee shall be composed of the following:

- (1) three members of the District 2 Board, or their designees, appointed by the District 2 Board;

- (2) three members of the District 17 Board, or their designees, appointed by the District 17 Board;
- (3) three members of the Sumter City Council, or their designees, appointed by the city council;
- (4) three members of the county council, or their designees, appointed by the county council; and
- (5) thirteen members appointed by the Sumter County Legislative Delegation, with consideration given to geographic, economic, and demographic segments of the community.

S. 639 117th Gen. Assem., Reg. Sess. (S.C. 2008). You ask whether or not those serving on the Transition Committee due to their service on the District 2 Board, District 17 Board, Sumter City Council, or Sumter County Council are dual office holding.

Although positions on the two school district boards, Sumter City Council, and Sumter County Council are considered offices for purposes of dual office holding, as we previously determined, a position on the Transition Committee is not an office. Ops. S.C. Atty. Gen., August 16, 2006 (finding “membership on a county school board or board of trustees constitutes an office for dual office holding purposes.”); January 17, 2008 (finding “a position on a city or town council constitutes an office for purposes of dual office holding.”); March 7, 2008 (finding “a member of county council holds an office for dual office holding purposes.”). Thus, we do not believe any member selected for membership on the board pursuant to categories (1) through (4) above is in violation of the prohibition on dual office holding.

Furthermore, service by these individuals on the Transition Committee is by virtue of their positions on the school district boards, Sumter City Council, and Sumter County Council. Thus, we consider these members to be ex officio. As we concluded in prior opinions: “The prohibition of dual office holding generally does not apply when service in a second position is ‘by virtue of’ (or ex officio) to service in another position. So long as there is a ‘reasonable relation’ between the functions of the first office and the duties ex officio, the dual office holding prohibition is thus deemed inapplicable.” Op. S.C. Atty. Gen., February 4, 2008 (citing Ashmore v. Greater Greenville Sewer Dist., 211 S.C. 77, 92, 44 S.E. 88 (1947)). Accordingly, regardless of whether a position on the Transition Committee is an office, we do not believe those appointed to the Transition Committee by virtue of their positions on the two school districts, Sumter City Council, or Sumter County Council are in violation of the prohibition on dual office holding.

Conclusion

Analyzing the definition of the term “meeting” for purposes of FOIA, we do not believe a meeting of the Transition Committee constitutes a meeting of the District 2 Board despite the fact that the Transition Committee is composed of a quorum of the District 2 Board. However, we note that the four members of the District 2 Board cannot utilize a Transition Committee meeting to conduct District 2 business. In addition, we caution that a court would likely find the Transition Committee to be a public body subject to FOIA.

We also do not believe that membership on the Transition Committee constitutes an office for purposes of dual office holding. Thus, in our opinion, service by a member of District 2 Board selected by the Sumter County Legislative Delegation to serve on the Transition Committee, does not violate article XVII, section 1A. For this same reason, we do not believe a member of the Transition Committee serving via their membership on the District 2 Board, District 17 Board, Sumter City Council, or Sumter County Council violates this constitutional provision. Nonetheless, even if membership on the Transition Committee were considered to be an office, we do not believe those appointed by virtue of another position are in violation of this provision.

Very truly yours,

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REVIEWED AND APPROVED BY:

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